

Questions and Answers on the Second Circuit Decision in the Rowland-Ryan Lawsuit

On May 31, 2013, the Second Circuit granted summary judgment to a coalition of plaintiffs lead by SEBAC and its constituent unions in a case challenging former governor John Rowland's 2003 lay off of nearly 3000 unionized state employees. The Court held that by singling out union members instead of including managers and other unrepresented employees, the Rowland Administration punished employees for exercising their fundamental right of free association, a right protected by the First Amendment to the United States Constitution. Effectively, the Court held that when a governor punishes people because of the group to which they belong - whether it's a union or a political party, or a religion - he or she violates our Constitution's most cherished provisions protecting free speech. Recently, Attorney General George Jepsen announced that he would seek to have the Second Circuit's decision reviewed by the United States Supreme Court. The questions and answers below provide some additional information about the case.

Question	Answer
1. What does it mean that Attorney General Jepsen has announced that he intends to ask the Supreme Court to review the decision?	To seek review, a petition for certiorari must be filed by August 29, 2013. If a petition for certiorari is filed, the Supreme Court normally decides whether to hear the case within 30-60 days (although if the petition is filed over the summer, the earliest it would be reviewed is the beginning of October). If the Supreme Court decides to hear the case, a briefing and argument schedule will be issued and the case would likely be decided by the end of June 2014. We are confident that the case was decided correctly so we believe it unlikely that the Supreme Court will agree to hear the case, and unlikely they would overrule it.
2. Who made this decision, Attorney General Jepsen, or the Governor?	The decision was made by the Attorney General who has the state constitutional and statutory responsibility to represent the State in these matters.
3. What does this decision mean to members that were laid off by Governor Rowland?	Once it is upheld, the decision directs the lower court to fashion appropriate equitable relief. That would typically involve reinstatement for laid off workers who are still laid off, and appropriate job adjustments for those who are working but in lower positions.
4. Are the damages just a make whole remedy, compensatory and/or punitive? Which leads to what is a make whole remedy, compensatory and punitive?	The grant of summary judgment is against the State in the federal court proceeding. No damages are available against the State in federal court. John Rowland and Marc Ryan are sued in their individual capacities, and damages are available against them in federal court if we prevail. In addition, there is a companion case pending in state court which does provide for damages against the state. Those damages would typically include lost pay, attorney's fees, and in some cases punitive damages.

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5. What about an employee not laid off but who was put into a lower classification or transferred a significant distance from his/her home?	Reimbursement of lost pay due to the involuntary demotion would be a normal part of damages if they are awarded. Travel expenses are less typically awarded.
6. Some employees elected to retire instead of being laid off, what happens to them?	This is still an open question. We will certainly argue that they should be offered reinstatement since the decision to retire wasn't truly voluntary. But that argument has not yet been made or ruled upon.
7. What happens to employees that lost grievance arbitrations over their layoffs including decisions that the decision to retire was a voluntary decision and their grievance was denied on this basis?	See the answer above.
8. Didn't SEBAC file a case in State court on this the same issue? What is the status of that case?	Yes. That case has been on hold pending the decision on the First Amendment issues in the federal case. The State and we agreed that whatever the final ruling is in the federal action on the First Amendment claims will control in the state action as well. So, if the Second Circuit's decision stands, that means we should be entitled to recover damages in the state court action.
9. What does it mean that former Governor Rowland and former OPM Secretary Ryan were sued as individuals?	This means that we are seeking damages against them personally. Those damages, if awarded, could be reimbursed by the state or not, depending on the Attorney General's assessment of whether the wrong doing was intentional.